

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
ADMINISTRATIVE PROCEDURES DIVISION**

**CHAPTER 1240-5-14
INTENTIONAL PROGRAM VIOLATIONS**

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1240-5-14-.01 PENALTIES FOR INTENTIONAL PROGRAM VIOLATIONS.

- (1) Individuals Who Commit Intentional Program Violations. If an Administrative Disqualification Hearing Official or a court of appropriate jurisdiction determines that a household member has committed an intentional program violation as defined in 1240-5-14-.02, or if the household member signs a waiver of right to an administrative disqualification hearing or an administrative consent agreement, that individual shall be disqualified from participation in the Food Stamp Program as follows:
- (a) One year for the first violation;
 - (b) Two years for the second violation, or for the first occasion of a finding by a Federal, State, or Local court of the trading of coupons for a controlled substance as defined in 8 USC 802;
 - (c) Permanently for the third violation;
 - (d) Permanently if convicted of trafficking in food stamp benefits of \$500 or more, or for the second occasion of a finding by a Federal, State, or local court of the trading of coupons for a controlled substance as defined in 8 USC 802, or for the first occasion, based on a finding by a Federal, State, or Local court of the trading of firearms, ammunition, or explosives for coupons;
 - (e) Ten years if found to have made a fraudulent statement or representation with respect to identity or residence in order to receive multiple benefits simultaneously; or
 - (f) The length of time specified by a court of appropriate jurisdiction. If the court fails to impose a disqualification period, the state agency shall impose the disqualification penalties in (a)-(e) above, unless the penalties are contrary to the court order.

Authority: TCA §§4-5-202, 71-1-105, 71-3-157, 71-3-158; PL 104-193, §§813-814 and 820; 7 CFR 273.16.
Administrative History: Original rule filed April 30, 1979; effective July 30, 1979. Amendment filed July 29, 1980; effective October 29, 1980. Amendment filed December 17, 1982; effective March 16, 1983. Repeal and new rule filed May 25, 1982; effective June 24, 1983. Amendment filed June 13, 1997; effective August 27, 1997.

1240-5-14-.02 DEFINITION OF INTENTIONAL PROGRAM VIOLATION. For purposes of determining through Administrative Disqualification Hearings whether or not a person has committed an intentional program violation, intentional program violations shall consist of having intentionally:

- (1) Made a false or misleading statement or having misrepresented, concealed, or withheld facts related to the Food Stamp Program; or

(Rule 1240-5-14-.02, continued)

- (2) Traded food stamp coupons for guns, ammunition, explosives or controlled substances; or
- (3) Committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamp coupons or ATPs.

Authority: TCA §§4-5-202, 71-1-105, 71-3-157, 71-3-158; 7 CFR 273.16. **Administrative History:** Original rule filed April 30, 1979; effective July 30, 1979. Amendment filed December 17, 1982; effective March 16, 1983. Repeal and new rule filed May 25, 1983; effective June 24, 1983. Amendment filed June 13, 1997; effective August 27, 1997.

1240-5-14-.03 NOTIFICATION TO APPLICANT HOUSEHOLDS. The Department shall inform the household in writing of the disqualification penalties for intentional program violations each time it applies for program benefits.

Authority: TCA §§4-5-202 and 71-1-105(12); PL 104-193, Title VIII. **Administrative History:** Original rule filed April 30, 1979; effective July 30, 1979. Amendment filed December 17, 1982; effective March 16, 1983. Repeal and new rule filed May 25, 1983; effective June 24, 1983. Amendment filed June 13, 1997; effective August 27, 1997.

1240-5-14-.04 DISQUALIFICATION HEARINGS. The Department shall conduct Administrative Disqualification Hearings for individuals accused of intentional program violations in accordance with the requirements outlined in this section. An Administrative Disqualification Hearing shall be initiated by the Department in cases in which the Department has sufficient documentary evidence to substantiate that an individual has committed one or more acts of intentional program violation as defined by Rule 1240-5-14-.02. Such cases may include those in which the Department believes the facts of the individual case do not warrant civil or criminal prosecution through the appropriate court system. Other cases may be those previously referred for prosecution but for which prosecution was declined by the appropriate legal authority. The Department may initiate an Administrative Disqualification Hearing regardless of the current eligibility of the individual. The disqualification period for nonparticipants at the time of the final hearing decision shall be deferred until the individual applies for and is determined eligible for program benefits. If the Department does not initiate Administrative Disqualification procedures or refer for prosecution a case involving an overissuance caused by a suspected act of intentional program violation, the Department shall take action to collect the overissuance by establishing an inadvertent household error claim against the household. The burden of proving intentional program violation is on the Department. The Department will conduct Administrative Disqualification Hearings in cases in which the Department believes the facts of the individual case do not warrant civil or criminal prosecution through the appropriate court system, in cases previously referred for prosecution that were declined by the appropriate legal authority, and in previously referred cases where no action was taken within a reasonable period of time and the referral was formally withdrawn by the Department. The Department shall not initiate an Administrative Disqualification Hearing against an accused individual whose case is currently being referred for prosecution or subsequent to any action taken against the accused individual by the prosecutor or court of appropriate jurisdiction, if the factual issues of the cases arise out of the same or related circumstances.

- (1) **Consolidation Of Administrative Disqualification Hearing With Fair Hearing.** The Department may combine a Fair Hearing and an Administrative Disqualification Hearing into a single hearing if the factual issues arise out of the same or related circumstances and the household receives prior notice that the hearings will be combined. If the Disqualification Hearing and Fair Hearing are combined, the Department shall follow the time frames for conducting Disqualification Hearings. And, if the hearings are combined for the purpose of settling the amount of the claim at the same time as determining whether or not intentional program violation has occurred, the household shall lose its right to a subsequent Fair Hearing on the amount of the claim. However, the Department shall, upon household request, allow the household to waive the thirty (30) day advance notice period required by law when the Disqualification Hearing and Fair Hearing are combined.
- (2) **Disqualification Hearing Procedures.**

(Rule 1240-5-14-.04, continued)

- (a) The Department shall provide Administrative Disqualification Hearings only at the State level; however, these hearings may be conducted in any of its project areas.
 - (b) The Department may use the same hearing officials for Disqualification Hearings and Fair Hearings or designate hearing officials to conduct Disqualification Hearings only.
 - (c) At the Disqualification Hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.
 - (d) Within ninety (90) days of the date the household member is notified in writing that a hearing initiated by the Department has been scheduled, the Department shall conduct the hearing, arrive at a decision, and notify the household member and the local office of the decision. The household member or representative is entitled to a postponement of the scheduled hearing provided that the request for postponement is made at least ten (10) days in advance of the date of the scheduled hearing. However, the hearing shall not be postponed for more than a total of thirty (30) days and the Department may limit the number of postponements to one. If the hearing is postponed, the above time limits shall be extended for as many days as the hearing is postponed.
 - (e) The Department shall publish clearly written rules of procedure for Disqualification Hearings and shall make these procedures available to any interested party upon request.
- (3) Advance Notice Of Hearing.
- (a) The Department shall provide written notice to the household member suspected of an intentional program violation at least thirty (30) days in advance of the date a Disqualification Hearing by the Department has been scheduled. If mailed, the notice shall be sent either by first class mail or certified mail, return receipt requested. The notice may also be provided by any other reliable method. If the notice is sent using first class mail and returned as undeliverable, the hearing may still be held. The thirty (30) day notice period begins upon the date of the notice. The notice shall contain at a minimum:
 - 1. The date, time, and place of the hearing;
 - 2. The charge(s) against the household member;
 - 3. A summary of the evidence, and how and where the evidence can be examined;
 - 4. A warning that the decision will be based solely on information provided by the Food Stamp Office if the household fails to appear at the hearing;
 - 5. A statement that the household member or representative will have ten (10) days from the date of the scheduled hearing to present good cause failure to appear in order to receive a new hearing;
 - 6. A warning that a determination of intentional program violation will result in disqualification either temporarily or permanently as required by 1240-5-14-.01 or current Federal Law or Federal Regulations at the time the decision is rendered. The Department will also include a statement of which penalty it believes to be applicable in the case scheduled for hearing;
 - 7. A listing of the household member's rights;

(Rule 1240-5-14-.04, continued)

8. A statement that the hearing does not preclude the State or Federal Government from prosecuting the household member of intentional program violation in a civil or criminal court action nor from collecting the overissuance; and
 9. A statement that the individual can call the county Food Stamp Office to get the name and phone number (if available) or someone who can give free legal advice. If free legal advice is not available, the county office shall provide, when called, the phone number of a lawyer referral service of the local bar association.
- (b) A copy of the Department's published hearing procedures shall be attached to the thirty (30) day advance notice or the advance notice shall inform the household of its right to obtain a copy of the Department's published hearing procedures upon request.
 - (c) If no proof of receipt of notice of the disqualification hearing is obtained, a timely showing of non-receipt by the household member shall be considered good cause for not appearing at the hearing. A "timely showing" because of alleged failure to receive the written notice shall be made to the Department by the household member by a sworn, written statement signed by the household member presented to the Department's hearing official who rendered the decision on the household member's case within thirty (30) days of the date of written notice of the decision made at the hearing.
 - (d) Good cause for not appearing at the hearing due to alleged non-receipt of the written notice shall include a sworn, written statement of the household member that:
 1. The mail was misdelivered by the postal service, or the mail was destroyed or inaccessible due to circumstances beyond the household's control. Failure of any member of the household to timely acquire the mail when delivered, failure to recall having received the notice, or the failure of any individual to whom the pick-up or receipt of the mail was assigned by the household to pick up or receive the mail shall not be sufficient reason to establish good cause for purposes of the subparagraph; or
 2. The individual was hospitalized during the notice period and due to such hospitalization was unable, due to a medical condition, to receive or read the notice or to appear at the hearing as a result of such hospitalization;
 - (e) In all other instances, the household member has ten (10) days from the date of the scheduled hearing to present reasons, other than failure to receive the written notice, to the hearing officer for failure to appear at the hearing.
- (4) Scheduling Of Hearing. The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional program violation.
 - (a) If the household member or its representative cannot be located or fails to appear at a hearing initiated by the Department without good cause, the hearing shall be conducted without the household member being represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional program violation was committed, based on clear and convincing evidence.
 - (b) If the household member is found to have committed an intentional program violation, but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the Department shall conduct a new hearing. The Hearing Official who originally ruled on the case may conduct the new hearing. The household member has ten (10) days from the date of the scheduled hearing

(Rule 1240-5-14-.04, continued)

to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.

- (5) **Participation While Awaiting A Hearing.** A pending disqualification hearing shall not affect the individual's nor the household's right to be certified and participate in the program. Since the Department cannot disqualify a household member for intentional program violation until the hearing official finds that the individual has committed an intentional program violation, the Department shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household. However, the household's benefits shall be terminated if the certification period has expired and the household, after receiving its notice of expiration, fails to reapply. The Department shall also reduce or terminate the household's benefits if the Department has documentation which substantiates that the household is ineligible or eligible for fewer benefits and the household fails to request a fair hearing and continuation of benefits pending the hearing.
- (6) **Criteria For Determining Intentional Program Violation.** The Commissioner or his/her designated representative shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed and intended to commit an intentional program violation.
- (7) **Decision Format.** The decision of the Commissioner or his/her designated representative shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent FNS Regulation, and respond to reasoned arguments made by the household member or representative.
- (8) **Disqualification Penalties.**
 - (a) One or more intentional program violations which occurred prior to April 1983 shall be considered as only one previous violation when determining the appropriate penalty to impose.
 - (b) The disqualification shall apply only to the individual who is found to have committed the intentional program violation. It does not apply to the whole household.
 - (c) **Remaining Household Members.** Once a household member is disqualified for an intentional program violation, the Department shall impose allotment reduction as the means of restitution.
 - (d) **Notification to Applicant Households.** The Department shall inform the household in writing of the disqualification penalties for intentional program violation each time it applies for program benefits.
 - (e) **Imposition of Disqualification Penalties.**
 1. The disqualification penalties outlined in paragraph (1) of 1240-5-14-.01 shall apply only to individuals for acts of intentional program violation which occurred either during a certification period based on an application form containing these penalties or after receipt of written notification from the Department of these penalties. If the act of intentional program violation which led to the disqualification occurred prior to written notification of these disqualification penalties, the household member shall be disqualified in accordance with the disqualification periods in effect at the time of the rendering of such determination. However, no disqualification penalty may be imposed which is contrary to court order.
 2. Appropriate disqualification penalties (as outlined in paragraph (1) of 1240-5-14-.01) shall be imposed (unless contrary to court order) on household members in the following instances:

(Rule 1240-5-14-.04, continued)

- (i) An administrative disqualification hearing official rules that the household member has committed an intentional program violation. The disqualification period shall begin with the first month which follows the date the household member receives written notification of the hearing decision as cited in Section 1240-5-14-.04.
 - (ii) A court of appropriate jurisdiction finds the household member guilty of intentional program violation. In such cases, the Department shall disqualify the individual for the length of time specified by the court. If the court fails to impose a disqualification period, the Department shall impose a disqualification period in accordance with paragraph (1) of 1240-5-14-.01. If the court does not specify a date for initiating the disqualification period, the Department shall initiate the disqualification period as soon as is administratively feasible.
 - (iii) A household member suspected of intentional program violation signs a consent agreement in cases of pre-trial diversion. The period of disqualification shall begin as soon as it is administratively feasible after the date the household member signed the disqualification consent agreement.
 - 3. The same act of intentional program violation repeated over a period of time shall not be separated so that separate penalties can be imposed.
 - 4. An adverse Administrative Disqualification Hearing may be appealed to Chancery Court by petition for judicial review, but the determination of intentional program violation made by a disqualification hearing official cannot be reversed by a subsequent fair hearing decision. The period of disqualification may be subject to stay or other injunctive remedy by the court in which the petition for review is filed.
 - 5. Once a disqualification penalty has been imposed against an individual, the period of disqualification shall continue uninterrupted until completed regardless of eligibility of the disqualified member's household. The disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional program violation, regardless of its eligibility for benefits.
- (9) Notification Of Hearing Decision.
- (a) If the Commissioner or his/her designated representative finds that the household member did not commit the intentional program violation, the Department shall provide a written notice which informs the household member of the decision.
 - (b) If the Commissioner or his/her designated representative finds that the household member committed the intentional program violation, the Department shall provide written notice to the household member prior to disqualification. The notice shall inform the household member of the decision and the reason for the decision. In addition, the notice shall inform the household member of the date disqualification will take effect. If the individual is no longer participating, the notice shall inform the individual that the period of disqualification will be deferred until such time as the individual again applies for and is determined eligible for program benefits. The Department shall also provide written notice to the remaining household members, if any, of either the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired.
 - (c) A written demand letter for restitution must be provided. This letter informs the household of:

(Rule 1240-5-14-.04, continued)

1. The amount owed;
 2. The reason for the claim;
 3. The period of time the claim covers;
 4. Any offsetting that was done to reduce the claim;
 5. How the household must pay the claim; and
 6. The household's right to a fair hearing if the household disagrees with the amount of the claim unless the household has already had a fair hearing on the amount of the claim as a result of consolidation of the Administrative Disqualification Hearing with the Fair Hearing.
- (d) The household shall also be informed of its right to request renegotiation of any agreed to schedule should the household's economic circumstances change.
- (e) The demand letter shall provide space for the household to indicate the method of repayment and a signature block.

Authority: TCA §§4-5-202, 71-1-105, 71-3-157, 71-3-158; PL 104-193, §§813-814; 7 USC 2015(b); 7 CFR 273.16. **Administrative History:** Original rule filed April 30, 1979; effective July 30, 1979. Amendment filed July 29, 1980; effective October 29, 1980. Repeal and new rule filed May 25, 1983; effective June 24, 1983. Amendment filed June 13, 1997; effective August 27, 1997.

1240-5-14-.05 WAIVED HEARINGS. An individual is allowed to waive his/her right to an Administrative Disqualification Hearing, and the procedures shall conform to the requirements outlined in this section.

(1) Advance Notification.

- (a) The Department shall provide written notification to the household member suspected of intentional program violation that the member can waive his/her right to an Administrative Disqualification Hearing. Prior to providing this written notification, the Department shall ensure that the evidence against the household member is reviewed by someone other than the eligibility worker assigned to the accused individual's household, and that a decision is obtained that such evidence warrants scheduling a Disqualification Hearing.
- (b) The written notification provided to the household member which informs him/her of the possibility of waiving the Administrative Disqualification Hearing shall include, at a minimum:
1. The date that the signed waiver must be received by the Department to avoid the holding of a hearing and a signature block for the accused individual, along with a statement that the head of household must also sign the waiver if the accused individual is not head of the household with an appropriately designated signature block;
 2. A statement of the accused individual's right to remain silent concerning the charge(s), and that anything said or signed by the individual concerning the charge(s) can be used against him/her in a court of law;
 3. The fact that a waiver of the disqualification hearing will result in disqualification and a reduction in benefits for the period of disqualification even if the accused individual does not admit to the facts as presented by the Department;

(Rule 1240-5-14-.05, continued)

4. An opportunity for the accused to specify whether or not he/she admits to the facts as presented by the agency. This opportunity shall consist of the following statements and a method for the individual to designate his/her choice:
 - (i) I admit to the facts as presented and understand that a disqualification penalty will be imposed if I sign this waiver; or
 - (ii) I do not admit that the facts as presented are correct. However, I have chosen to sign this waiver and understand that a disqualification penalty will result;
5. The telephone number and name of the person to contact for additional information; and
6. The fact that the disqualified individual and/or the remaining household members, if any, will be held responsible for repayment of the resulting claim.

(2) Disqualification Penalties.

- (a) One or more intentional program violations which occurred prior to April 1983 shall be considered as only one previous violation when determining the appropriate penalty to impose.
- (b) The disqualification shall apply under this section only to the individual who has signed a waiver to the Administrative Disqualification Hearing, or who signed a Disqualification Consent Agreement. It does not apply to the whole household.
- (c) Remaining Household Members. Once a household member is disqualified for an intentional program violation, the Department shall impose allotment reduction as the means of restitution.
- (d) Notification to Applicant Households. The Department shall inform the household in writing of the disqualification penalties for intentional program violation each time it applies for program benefits.
- (e) Imposition of Disqualification Penalties.
 1. The disqualification penalties outlined in paragraph (1) of 1240-5-14-.01 shall apply only to individuals for acts of intentional program violation which occurred either during a certification period based on an application form containing these penalties or after receipt of written notification from the Department of these penalties. If the act of intentional program violation which led to the disqualification occurred prior to written notification of these disqualification penalties, the household member shall be disqualified in accordance with the disqualification periods in effect at the time of the rendering of such determination. However, no disqualification penalty may be imposed which is contrary to court order.
 2. Appropriate disqualification penalties (as outlined in paragraph (1) of 1240-5-14-.01) shall be imposed (unless contrary to court order) on household members in the following instances:
 - (i) The household member suspected of intentional program violation signs the waiver of right to an administrative disqualification hearing, and the signed waiver is received within the time-frame specified by the Department. The disqualification period shall begin with the first month which follows the date the household receives written notification of the disqualification as cited in Section 1240-5-14-.05.

(Rule 1240-5-14-.05, continued)

3. The same act of intentional program violation repeated over a period of time shall not be separated so that separate penalties can be imposed.
 4. No further administrative appeal procedure exists after an individual waives his/her right to an administrative disqualification hearing and a disqualification penalty has been imposed. The disqualification penalty cannot be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court of appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.
 5. Once a disqualification penalty has been imposed against an individual, the period of disqualification shall continue uninterrupted until completed regardless of eligibility of the disqualified member's household. The disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional program violation, regardless of its eligibility for benefits.
- (3) Notification Of Disqualification. The Department shall provide written notice to the household member prior to disqualification. The Department shall also provide written notice to any remaining household members of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The notice shall conform to the requirements for notification of a hearing decision specified in 1240-5-14-.04 (9). A written demand letter for restitution shall also be provided.

Authority: TCA §§4-5-202, 71-1-105, 71-3-157, 71-3-158; PL 104-193, §§813-814; 7 USC 2015(b); 7 CFR 273.16. **Administrative History:** Original rule filed July 29, 1980; effective October 29, 1980. Repeal and new rule filed May 25, 1983; effective June 24, 1983. Amendment filed June 13, 1997; effective August 27, 1997.

1240-5-14-.06 COURT IMPOSED DISQUALIFICATIONS.

- (1) Appropriate Cases. A court of appropriate jurisdiction with either the State, a political subdivision of the State, or the United States as prosecutor or plaintiff may order an individual disqualified from participation in the program if the court finds that individual guilty of intentional program violation.
- (2) The Department shall disqualify an individual found guilty of intentional program violation for the length of time specified by the court. If the court fails to impose a disqualification period, the Department shall impose a disqualification period in accordance with the provisions in 1240-5-14-.01 unless contrary to the court order. If disqualification is ordered but a date for initiating the disqualification period is not specified, the Department shall initiate the disqualification period for currently eligible individuals within forty-five (45) days of the date the disqualification was ordered. Any other court-imposed disqualification shall begin within forty-five (45) days of the date the court found a currently eligible individual guilty of civil or criminal misrepresentation or fraud.
 - (a) If the individual is not eligible for the program at the time the disqualification period is to begin, the period shall be postponed until the individual applies for and is determined eligible for benefits.
 - (b) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified individual or his/her household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional program violation regardless of its eligibility for program benefits.

(Rule 1240-5-14-.06, continued)

- (3) Notification Of Disqualification. If the court finds that the household member committed intentional program violation, the Department shall provide written notice to the household member. The notice shall be provided prior to disqualification, whenever possible. The notice shall inform the household member of the disqualification and the date that disqualification will take effect. The Department shall also provide written notice to the remaining household members, if any, of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. In addition, the Department shall provide the written demand letter.

Authority: T.C.A. §§ 4-5-202, 71-1-105(12), 71-5-314 and 7 C.F.R. § 273.16 (f) and (g). **Administrative History:** Original rule filed May 25, 1983; effective June 24, 1983. Amendment filed February 26, 2007; effective May 12, 2007.